UNITED STATES PATENT AND TRADEMARK OFFICE

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/635,823	08/09/2000	Marc Staveley	16747-017400US	5392

32658 7590 12/23/2003		EXAMINER
HOGAN & HARTSON LLP		GEREZGIHER, YEMANE M
ONE TABOR CENTER, SUITE 1500		
1200 SEVENTEEN ST.	ART UNIT	PAPER NUMBER
DENVER, CO 80202	2144	7

DATE MAILED: 12/23/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

PTO-90C (Rev. 10/03)

Office Action Summary	Application No. 09/635,823	Applicant(s) STAVELEY ET AL.
	Examiner Yemane M Gerezgiher	Art Unit 2142

-- *The MAILING DATE of this communication appears on the cover sheet with the correspondence address* --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE <u>3</u> MONTH(S) FROM
THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed
  after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any
  earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *09 August 2000*.

2a)☐ This action is **FINAL**.   2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-17* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1-17* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☒ The drawing(s) filed on *09 August 2000* is/are: a)☐ accepted or b)☒ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. §§ 119 and 120

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a)☐ All b)☐ Some * c)☐ None of:
1.☐ Certified copies of the priority documents have been received.
2.☐ Certified copies of the priority documents have been received in Application No. _____.
3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
* See the attached detailed Office action for a list of the certified copies not received.

13)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
a) ☐ The translation of the foreign language provisional application has been received.

14)☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____ .

4) ☐ Interview Summary (PTO-413) Paper No(s). _____ .
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: .

DETAILED ACTION

1.   This application has been examined. Claims 1-17 are pending.

Drawings

2.   New corrected drawings are required in this application because the drawings

submitted are not formal and not clearly illustrated. Applicant is advised to employ the

services of a competent patent draftsperson outside the Office, as the U.S. Patent and

Trademark Office no longer prepares new drawings. The corrected drawings are

required in reply to the Office action to avoid abandonment of the application. The

requirement for corrected drawings will not be held in abeyance.

Claim Rejections - 35 USC § 102

3.   The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that

form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4.   Claims 1, 2, 5, 6, 8 -14 are rejected under 35 U.S.C. 102(b) as being anticipated

by Burgess et al (U.S. Patent Number 5,758,071) hereinafter referred to as Burgess.

As per claims 1 and 9, Burgess disclosed a method and system for monitoring

the configuration of a network device connected to the network. Where the first network

device having a monitoring tool and tracking agents *data collector(s) module(s)* (col. 3,

lines 47-55 and Fig. 1) obtaining the configuration/status (col. col. 4, lines 30-40) data,

where the configuration data comprised information about the first network device of

computer network and where monitoring tool and tracking agents of the first network

device collected the configuration information and transmitted back to the monitoring

tool running in the first device (col. 3, line 47 through col. 4, line 29 and col. 4, lines 45-

53) and where the monitoring tool transmitted ("uploaded") the configuration information

to a second computer connected to the network where the second computer is a

primary site (central site) receiving the transmitted configuration data of the network

device and loading the configuration data in to a database (ABSTRACT, col. 2, lines 39-

45, Figs. 5 and 10 and col.9, lines 57-67).

As per claims 6 and 12, Burgess taught accessing a configuration file and

examining which data collector was associated with a network device in the network

(col. 16, lines 1-14) and further disclosed remotely monitoring the execution of

collectors/agents that run on the network devices to be monitored (claims 8 and 10)

(Fig. 4).

As per claim 13, Burgess disclosed a display/graphical interface at the network

device for viewing data (col. 4, lines 54-66).

Although Burgess did not explicitly discuss that the upload application running

on a network device comprising parsing data into packets, transmitting the packets

separately to the central site and recombining the packets to recreate the data at the

central site (claim 5 and 11), it was inherently disclosed, because parsing or splitting

data in to size-limited packets, transmitting the packets and merging the packets at the

destination site is inherent when transmitting a configuration or device status or other

information from one network device to another network device.

Regarding to claims 2 and 14, Burgess disclosed a step of accessing a database

stored at the primary central location. See col. 2, lines 36-50.

Claim Rejections - 35 USC § 103

5.   The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all

obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set
> forth in section 102 of this title, if the differences between the subject matter sought to be patented and
> the prior art are such that the subject matter as a whole would have been obvious at the time the
> invention was made to a person having ordinary skill in the art to which said subject matter pertains.
> Patentability shall not be negatived by the manner in which the invention was made.

6.   Claims 3, 4, 7, 8 and 15 -17 are rejected under 35 U.S.C. 103(a) as being

unpatentable over Burgess et al (U.S. Patent Number 5,758,071) as applied to claims

above and in view of Kullick et al (U.S. Patent Number 5,732,275) hereinafter referred

to as Kullick and further in view of what would have been obvious to one of ordinary skill

in the art at the time the invention was made.

With respect to the claim rejection applied above, Burgess substantially disclosed

the invention as claimed. However, Burgess did not expressly teach *using a browser to*

send request for information to the central site, and at the central site to use a command

query to retrieve information from a database and sending the retrieved information

back to the web browser through the internet and monitoring tool/application

communicating with the central site to determine is newer releases of the monitoring

tool or application or the data collectors exist, and if so downloading the newer releases

from the central site.

Examiner takes Official Notice (see MPEP § 2144.03) that " using a browser to

send request for information to the central site, and at the central site to use a command

inquiry to retrieve information from a database and sending the retrieved information

back to the web browser formatted in a report form through the internet " in a computer

networking environment and mainly in a client server environment where a client using

a web browser sends a request to a remote server to retrieve desired information and

where a command inquiry is generated and query is performed at the remote server to

retrieve information from a database associated with the server and sending the

retrieved information to the requesting client at a client network via the Internet was very

well known in the art at the time the invention was made. The Applicant is entitled to

traverse any/all official notice taken in this action according to MPEP § 2144.03.

However, MPEP § 2144.03 further states "See also In re Boon, 439 F.2d 724, 169

USPQ 231 (CCPA 1971) (a challenge to the taking of judicial notice must contain

adequate information or argument to create on its face a reasonable doubt regarding

the circumstances justifying the judicial notice)." Specifically, In re Boon, 169 USPQ

231, 234 states "as we held in Ahlert, an applicant must be given the opportunity to

challenge either the correctness of the fact asserted or the notoriety or repute of the

reference cited in support of the assertion. We did not mean to imply by this statement

that a bald challenge, with nothing more, would be all that was needed". Further note

that 37 CFR § 1.671(c)(3) states "Judicial notice means official notice". Thus, a

traversal by the Applicant that is merely "a bald challenge, with nothing more" will be

given very little weight.

An artisan working with Burgess system at the time the applicant's invention was

made would have been motivated to look for teachings that may have allowed to

automatically update a monitoring tool with a newer monitoring tool avoiding a human

interaction with the system in order to update the monitoring software. In these arts

Kullick taught a software module determining whether a newer version of the application

program was available at the central location and based on the determination if a newer

application tool or software was detected the software module automatically

downloaded updating the older version with a newer version of the software application.

See ABSTRACT and patent claims 7 and 24.

Thus, it would have been obvious to one of ordinary skill in the art at the time the

applicant's invention was made to take the commonly known teachings (using a web

browser to send request to a site and retrieve information from a database in the site

and send the retrieved data back to the user interface or web browser formatted in a

report form) and further to take the teachings of Kullick related to a method and

apparatus for managing and automatically updating software program by selecting

available newer version of the same program stored in the central site and have

modified Burgess related to monitoring network devices connected to the network,

because such a modification would "permit a software program running on a computer

to be automatically updated with a newer version in a completely automated fashion, without requiring external access to the computer, and in a manner that is completely transparent to the user of the computer. " See col. 2, lines 33-37.

Conclusion

7.   The prior art made of record and not relied upon is considered pertinent to Applicant's disclosure.

a.   Sm.o slashed.rgrav, Axel-Stephane (U.S. Patent Number 6, 615,261) Entitled: *Performance analysis of data networks using a normalized sampling method.*

b.   Foley, Michael P. et al (U.S. Patent Number 6,487,590) Entitled: *Method for controlling a network element from a remote workstation.*

c.   Ballantine, Peter Roy et al (U.S. Patent Number 6,446,123) Entitled: *Tool for monitoring health of networks.*

d.   Fuss, Albert et al (U.S. Patent Number 6,401,119) Entitled: *Method and system for monitoring and managing network condition.*

e.   Johnson, II, Peter Christopher et al (U.S. Patent Number 6,397,245) Entitled: *System and method for evaluating the operation of a computer over a computer network.*

f.   Tams, Jonathan et al (U.S. Patent Number 6,327,620) Entitled: *Methods and apparatus for collecting, storing, processing and using network traffic data.*

g.   Steele, Douglas William et al (U.S. Patent Number 6,282,175) Entitled:

Method for tracking configuration changes in networks of computer systems

through historical monitoring of configuration status of devices on the network.

h.   Fletcher, Rick et al. (U.S. Patent Number 6,108,782) Entitled: *Distributed*

remote monitoring (dRMON) for networks.

i.   Dev, Roger H. et al. (U.S. Patent Number 6,049,828) Entitled: *Method and*

apparatus for monitoring the status of non-pollable devices in a computer

network.

j.   Friedrich, Richard J. et al. (U.S. Patent Number 5,958,009) Entitled:

System and method for efficiently monitoring quality of service in a distributed

processing environment.

k.   Baghai, Ali et al (U.S. Patent Number 5,905,868) Entitled: *Client/server*

distribution of performance monitoring data.

8.   Any inquiry concerning this communication or earlier communication from the

examiner should be directed to Yemane Gerezgiher whose telephone number is (703)

305-4874. The examiner can normally be reached on Monday- Friday from 9:00 AM to

5:30 PM.

If attempts to reach the examiner by telephone are unsuccessful. The examiner's
supervisor, Harvey Jack B, can be reached at (703) 305-9705.

Yemane Gerezgiher
AU 2142

JACK B. HARVEY
SUPERVISORY PATENT EXAMINER